



States Moving to Make Divorce Tougher to Get

By Jennifer G. Hickey

May 2, 2014

More than 40 years after California became the first state to legalize no-fault divorce, some state legislatures are taking up efforts to slow down the dissolution of marriages.

"There are a lot of different reasons why people are discontented with the modern scheme of no-fault divorce law, including the rapid way people can get a divorce and the apparent unfairness of the system," Walter Olson, a senior fellow at the Cato Institute, told Newsmax.

Olson says one of the cases for reform is the inherent unfairness of no-fault divorce, considering it is common that one spouse is pushing for the breakup and the system benefits them over the spouse who wishes to remain married.

"There are concerns about the unfairness of divorce law and the legal structure governing it. Many ask, why shouldn't the courts be able to draw distinctions between individuals in terms of who may have engaged in misconduct," Olson said.

Some state legislatures are considering stringent changes in divorce law. They mostly involve marriages where a minor child is part of the family.

For example, a measure introduced in February in Kansas would [remove "incompatibility" as justification](#) for obtaining a divorce. The bill, sponsored by state Rep. John Bradford, would not eliminate no-fault divorce, but would simply require more specifics when providing reasons for divorce.

And Alan J. Hawkins, professor of Family Life at Brigham Young University, said a bill in Utah is not an attempt to make no-fault divorce more difficult, but is building on previous reforms.

"Utah did what many states did about 20 years ago, which was to mandate classes for people with minor children to teach them positive co-parenting skills, [and] provide counseling on how to navigate the divorce process. Today a majority of states have similar mandates," Hawkins told Newsmax.

In 2007, Utah added an educational component by creating a class called "divorce orientation."

In addition to providing couples with information about the divorce process, including legal and mediation options, the classes offered participants research about the impact of divorce on families, and resources on ways they might work to repair a failing marriage through reconciliation.

"It was intended as kind of a last yellow light you had to go through before finalizing a divorce," Hawkins said.

Changes in divorce law started in 1969 when then-Gov. Ronald Reagan of California signed the Family Law Act, which allowed divorce as long as there was no evidence of wrongdoing, such as adultery. By the time Reagan was elected to his second term as president, 49 states had legalized no-fault divorce.

In 2010, [New York became the last state](#) to adopt a unilateral no-fault divorce law.

From 1960 to 1980, the national divorce rate increased from 9.2 divorces per 1,000 married women to 22.6 divorces per 1,000 married women. About half the children born to married parents in the 1970s would witness the divorce of their parent, a sharp increase from the 11 percent of Americans born in the 1950s, according to Pew Social Trends.

Some critics oppose divorce reform on the grounds that government has no place being involved in whether couples decide to end their marriages, but Cato's Olson says government will inevitably play a role.

"The state can't actually stay out of the issue because they have to decide how property and income streams are divided, so it is impossible to hold a laissez-faire attitude. The support for divorce is an indicator that people may not want what is best for them. They do not seem willing or aren't listening to the social science on the importance of marriage and the impact on children of divorce or being born out of wedlock," Olson said.

The poverty rate for single parents with children in the United States in 2009 was 37.1 percent, according to the U.S. Census Bureau. The poverty rate for married couples with children was 6.8 percent. Being raised in a married family reduced a child's probability of living in poverty by about 82 percent.

Other states also have considered various degrees of reform in recent years.

Arizona enacted a law in 2011 that would allow a spouse to compel an extension of the divorce process by up to four months, while in Oklahoma, the state Senate initiated a study of policies designed to reduce the state's divorce rate and to lessen the social and economic costs of divorce.

Oklahoma state Sen. Rob Standridge, who requested the study, also authored a proposal that would require divorcing couples with minor children to receive education during a 90-day "cooling down" period after a divorce petition is filed. The measure was approved in the Senate, but has not yet had a hearing in the state House.

Polling data shows Americans have mixed views on the morality of divorce. A [Pew Research survey](#) found 22 percent view divorce as morally unacceptable, compared with 33 percent who believe it is morally acceptable. However, 36 percent do not view it as a moral issue either way.

Despite their views, most people are in favor of making divorce tougher to get. Public opinion also favors slowing down the divorce process. A [2010 CBS News poll](#) found 53 percent of Americans believe divorces are given too easily and should be harder to obtain.

"There is not a groundswell [for divorce reform], but there certainly is more activity than there was five to 10 years ago. Passing divorce reform legislation has been extremely difficult," Hawkins said.

The challenge facing state lawmakers is the view that "there exists an unfettered legal right and any interference in the ending of marriage is seen by both left and right as an infringement on that right," Hawkins said.

Some opponents have attempted to characterize reforms as a move by conservative Republicans to "end divorce."

For example, [Slate columnist Amanda Marcotte](#) contends the "alarming trend" is a result of "Republican-controlled state houses pushing for waiting periods, mandating marriage classes, or even eliminating no-fault divorce entirely."

In a [Washington Post opinion piece](#), Scott Keyes of the liberal Center for American Progress characterized legislative moves to make it harder to divorce as a "fringe idea," but also noted that fringe ideas today sometimes become acceptable in the future. Keyes also said the "push to restrict divorce is a form of paternalism — expanding government in pursuit of socially conservative ends."

Beverly Willett, co-chair of the Coalition for Divorce Reform, disputes that assertion and says the issue is actually bipartisan.

"Most of the reforms that we are seeing do not get rid of no-fault divorce. Most states have very short waiting periods, so our goal was to create a way to use that waiting period to provide some sort of divorce education and to give people a sense of the reality of what they are about to go through, what the litigation means, the impact on children, and what the alternatives might be," she told Newsmax.

Willett joined forces with Chris Gersten, who worked in the Department of Health and Human Services in George W. Bush's administration, in founding the coalition to provide advocates and legislators with resources on ways to promote reforms. The coalition has published the [Parental Divorce Reduction Act](#), which served as a template for measures in several states.

Willett, a Democrat and former entertainment lawyer, believes the rhetoric of opponents is designed to inspire fear in people that they will no longer be able to obtain a divorce or that women will not have options to escape from an abusive marriage.

Willett said that "those who claim to want the government out of their bedroom or that they do not want it intruding on their freedoms are missing the point."

"Divorce is one of the most intrusive things in terms of the taxpayer dollars that are spent on the child-support apparatus. When you have a child-support order, there is also some sort of parenting plan as well," she said.

"What that means is someone else may be deciding who gets the children and when, where they go at holidays, what kind of schooling they attend. These are some of the most personal decisions that the government will be making," she said.